1883-005 Chancery Cause: William H. Burns vs. Thomas Givens & Lee Co.

Barlow, Webb, Hall, Bailey, Taylor

CA-Debt
T-Property

Virginia Lee circuit court 58

To the Honorable Judge of the said court, sitting in chancery, your orator Wm. H. Burns Humbly complaining sheweth to your honor; that one Thomas Givens was the owner of 54 acres of land in Lee county being the north end of the lot of land that was laid out to Daniel Givens or his children in the division made between Albert, and Givens of a tract of Land said Albert and Daniel Givens bought of one Cox, and which was conveyed by Cox to them, your orator further represents, that on the 24th day of sept 1870 said Thomas Givens sold to one Johnathan Burton the said 54 acres and gave him his Bond to thereafter convey it to him for the consideration of $ all of which has been paid except $125.00 for which Burton gave Givens his note negotiable, Binding himself to pay it two years after the date of said note this note has never been paid to Givens or your orator but the whole of said $125 with its interest is now justly due and owing, as hereinafter shewn, your orator

further represents to your honor that Barlow took possession of said lands and thereafter sold it to one John Webb for $ who paid him all of the purchase money except the $125, and its interest Barlow owes Givins for said land this sum of what he agreed to pay Barlow for the land Webb held back, and upon with Barlow to pay Givens, Barlow assigned & delivered him Givens, bond for a title, and delivered him the possession of the land, Webb died Thirsm intestate without ever paying Givens or your orator any part of said sum, and one of Webbs sons Christ Clifton Webb administered on John Webbs estate but he likewise failed to pay said Givens or your orator any part of said debt, and the interest he had in said land descended to, Justinis Webb, Wade Webb, Clifton Webb Missouria Webb Giney Webb, and some smaller children whose names are unknown to your orator incumbered with the dower claim of his Widow who is still alive and who resents with her children

all moved to the State of Texas where in they now reside. Except Wade Webb who has died unmarried and without children to inherit his interest it descended to his Brothers and sisters and perhaps his mother may Webb. The legal title to the land is still in Thomas Givins and and if it is not in him exclusively it is in him his co heirs, of Daniel Givins Louis Johns Givins, Josiah Givins ——————— and Emeline Taylor from whome he bought their interest and paid them for it and Thomas Givins is entitled to a conveyance from them they are all nonresidents of the State your orator is advised and so charges that when Mrs Webb and her children left the State, they put Harvey Hall in possession of the Land to manage for them, but he may set up some other claim to it, he controlls it and leased it the past crop year to Wm Bailey who is now living on it, your orator further represents that on the 22d of March 1872 Thomas Givins assigned the note for $125 00 to your orator as a collateral security

to secure him in the sum of $125.00 certain, and $25, more contingent for which your orator held his Bond under seal, the condition has now been performed and the whole $150,00 and its interest is due from Givens to your orator, no part of which has been paid, your orator now here files Bartons note to Givens with the assignment thereon to your orator and Givens Bond to your orator herewith as Exhibits A & B and makes them a part of this Bill, your orator represents that a lien exists in his favor on said 54 acres of land to the extent of Bartons note to Givens assigned as aforesaid to your orator, but he is without a remedy at law to enforce it, he prays your honor to grant him relief and decree a sale of so much of said 54 acres of land as will pay the $125,00 and its interest and the costs of this suit and decree so much of it as will pay your orators debt and its interest on Givens and the costs of this suit to your orator, and the rest to Thomas Givens, he prays

for such other relief as his case merits to have in a court of chancery, to that end he makes Jonathan Barlow Guss Webb Bent Webb Clifton Webb as exrs of John Webb dec'd and also as one of his heirs, Missouri Webb Jinie Webb, and the other unknown heirs of John Webb decd as also Mary Webb the widow, Haney Hall William Bailey, Thomas Givens Jehue Givins Josiah Givens, and Emaline Taylor defendants to this Bill and pray that a summons resident le awarded against the defendants and an order of publication be made against the non resident defendants, and that they be compelled to make true and perfect answers to this Bill, that the defendant Hall, and Bailey if they have no interest but that of tenant and agent need not appear as no relief in that event is sought against them, and as in duty bound your orator will ever pray &c.

Bruns Pq

Wm H. Burns
vs
Bill

Thos Gibbs et als

1878 Feb Bill Filed Sha Exed on Jonathan Barlow, Wm Bailey & Harvey McHall & Decree Nisi & Cmtd for C.P.
" Mar Decree Nisi Confd. C.P. Complt. & set for hearing by Cliff
1878 Mar Decree & Cmtd.
" Aug & Nov cmtd.
1879 Mar Decree & Cmtd.
1880 Mar Decree & Cmtd.
1880 Aug Cmtd.
1881 Mar Cmtd. Aug Cmtd.
1882 Continued this year
1883 Decree & Continued
" Decree final

Hyatt & C. $2.20

C $5.88 to Nov 78
A 15.00
S 1.50
Pr 5.00
$27.38
Estimate 6.00
$33.38
Over est 4.62 July 1881.

Wm H. Bunn Compt

Against J. W. Chancey.

Thos Givens et als Defts

This cause came on this day to be heard on the papers formerly read and report of Comr. J. W. O. Filed Aug 30th 1880 (to which there are no exceptions) and was argued by Counsel.

And it appearing from said report that Compt has been paid the full amount due him in ~~said~~ this cause, and that the residue of the purchase money is due accruing to defendant Thos Givens who was also the purchaser of the land in the bill mentioned. ~~And~~ The Court adjudges orders and decrees that the purchase money bonds on file in this cause be delivered to the said Thos Givens by the Clerk whenever said Givens may apply for them. And there being no necessity for any deed of Conveyance to be made to

the said Thos Givens inasmuch as the legal title to the land in the bill mentioned has never passed out of him. And Nothing further appearing necessary to be done in this cause, it is ordered that the same be stricken from the docket.

Wm A Bowen
D & Friend
Decree
Thos Givens
Entered page - 309
J. A. Hyatt Clerk

Entered this decree
Jan 1, A.D.
Paid
1883

Wm H Burns vs Thos Givens et als
on the Petition of J H Orr Comr
& receiver in this cause a rule is directed
to issue returnable to the 1st day of the
next term of this court against Thomas
Givens & Thos. S. Ely to shew cause why
a resale shall not be ordered to pay
the unpaid purchase money, said
Givens owes for the Lands purchased
by him.

Burns

vs

Evans et al

Decree

Ent Page 81

Fled 11 Dec. Clerk.

Entd

Dr. A.L.

Dec. 5/79

Wm H Burns Plff
vs
Thomas Givins et als Defts } Decree on Rule

This cause came on this 25th day of March 1880 on the rule against Thomas Givins, and this Pltf to their cause the, the Court heretofore ordered him should not be again ordered to pay the unpaid purchase money, he owes for said land, and was argued by counsel, and it appearing to the Court that said rule has been duly executed, and no cause being shown, it is now considered and ordered that unless Thomas Givins or some one for him, pay, to the receiver $ the sum of $156,62 with interest thereon from the 2d day of Dec 1878 till paid and the costs of this rule to be taxed by the clerk, that then said commissioner sell at public out cry at the court house door in Jonesville on a credit of so much of said land as will pay the same, so much of the land as will pay the costs of this rule

commissions & costs of selling, and one half of the Purchase Bid must be paid down, the rest must be on a credit of three months for which Bond and good security, with a waiver of the home stead, Bearing interest from date must be given, the time place and terms of sale must be advertised in the Lee County Sentinel 30 days before it is made, or if the Receiver elects by posting a notice thereof that time on the court house door in Jonesville and at some place in the neighborhood of the land to be sold, he must report to this court how he has executed this decree and this cause is continued.

Wm. G. Brown
vs
Thos Swinnatt

Entered Apr 96
Jas M Lay Clerk

Ent.
Jr. & A.K.
Mar 25/60

Jno H Burns
vs
Thos Givens et als
} Decree

This cause came on to be heard on the papers formerly read in the cause the former orders and decrees, and Commissioner Orr's report that he had sold the land as required by a former decree of the court & filed the 1st of Feby 1879 & was argued by counsel, and their being no exceptions to the report it is now approved and confirmed by the court and a writ is ordered to issue on the application of the purchaser to put him in possession of the land, and the Commissioner is ordered after giving bond as required in the penalty of $500 to collect the money arising on the sales of the land, and pay to Jno H Burns $50 of it with interest thereon from the 23d of March 1872 and the costs of this suit, the rest he will pay to Thos Givens, except so much as will pay the costs hereafter & he must report to this court and this cause is continued

$ 43.38

Lo 10.39
A 15.00
S 1.50
Pr 5.00
Com 10.00

41.89 41.89

1.49

Burns

vs

Decree

Givens et als

Entered Page 30

K.W. Orr Jr. D.C.

Entered

J. O. A. K.

Apl. 3/79

Wm H. Burns Plf

vs

Thos Givins et als Defts

Decree

This cause came on to be heard on the Bill and Exhibits, Service of process on the resident defendents, and order of publication against the nonresident and unknown defendants, and was argued by counsel, and it appearing to the court that process to answer has been duly served on the resident defendants more than one month before the present term of the court, and that the order of publication against the nonresident and unknown defendants has been duly posted and published as the law requires, which has been completed more than two months and the defendants, Bill failing to appear and make defense to the Bill, its allegations are taken as confessed, It is therefore decreed and ordered that a lien exists on the 54 acres of land described in the Bill, for the sum of $125,00 with interest

thereon from the 24th of Sept. 1872 till paid and the costs of this suit to be taxed by the clerk which, unless the defendants, or some of them, pay within ~~twenty~~ thirty days after the rendition of this decree, at its present term, It is ordered and decreed that James, W. Orr who is hereby appointed a commissioner therefor, do proceed at the front door of the court house in Jonesville on a court day of Lee county, to sell at public outcry one credit of six and twelve months, Except the costs and commissions for selling must be paid down, so much of the said 54 acres of land as will pay said sums, Bond with approved security bearing interest from date must be given to the commissioner for the deferred payments, the time place and terms of sale must be advertised at least thirty ~~twenty~~ days before the day of sale

by a notice posted on the front
of the court house, on a court day
one in some public place in the
neighbourhood of the land to be
sold, one in some other
place in the county likely to
give notoriety to the sale
will also, if he can ascertain the residence of the defendant Clifton Webb *
the said Commissioner must
report to this court how
he has executed this decree and
this cause is continued,

* the admr. of John Webb, and Mrs. Mary Webb of the
purport of this decree by letter at once.

Wm H. Burns

25½ Acres

Thos Giving Deed

Entered O.B. Page 731

R. W. Orr & Co

Entd.
J. A. K.
Apl. 2d. 78

Make sale at July Term 1878

Virginia Lee county, to wit

Wm H. Burns states that he is informed and believes it to be true, Jesse Webb, Bent Webb Clifton Webb, Jinie Webb, Missouri Webb, and Mary Webb sister of John Webb deceased are ~~heirs at law~~ and heirs non residents of this State and that the deceased John Webb has other heirs beside those named But their names, and place of residence is unknown to him He further states that he is informed and believes that Thomas Sivins, Johne Sivins, Josiah Sivins and Emaline Taylor are non residents of this State Dec the 4th 1877.

Wm H Burns

Sworn to before me by Wm H Burns Dec the 4th 1877.

James W Orr. Clerk.

Wm H Burns

vs } affidavit

Thos Givens et als

Virginia Lee circuit court to wit
Hon H Burns Clk
vs
Thos Givens et als defts

your Receiver James W Orr suggests to your honour that the whole of the purchase money for the bond sold to Thos Givens under a decree heretofore rendered in this cause, is now due, that no part of it has been paid wherefore he prays for a rule to issue against Thos Givens and his surety Thos S Ely returnable to the 1st day of the next term of this court to shew cause why a resale of said land shall not be ordered to pay the unpaid purchase money, this, one for the bond & the costs. Decr the 5th 1879.

James W Orr. Comr.

5 Mk

75
7.50
82.50
67.50
15

75
7
5.25
75.00
80.25

5 Oct 75
3 Deer
75 5 Mk Ant.
77 4 Jan

225
150
75

Bunny
US { petition
Trans Mk Co
Filed Dec 5th 1929
Fed M Co, Clerk

Virginia, Lee circuit court.

Wm A Burns Pltff
vs
Thomas Givens Deft } In chancery.

The undersigned Comr in this cause, respectfully reports, that since the last term of the court, and on to day, the defendant who became the purchaser of the land sold by your commissioner, has paid to the plaintiff the balance due him in this cause, and your comr will further state that the balance for which the land sold is for a debt due the said defendant, for purchase money for said land, and as he became the purchaser, I suppose all that is necessary is that he be delivered his notes for the balance of said purchase money, and said Givens never having made a deed nor parted from the title to said land, your comr supposes no deed to him by a comr will be necessary. Your Comr has paid to the plaintiff all he has collected in this cause except the estimated costs. Respfully submitted,

James W Orr Comr.

August 30th 1880.

Wm H Burns

vs

Comr Orr's 2nd Report.

Thomas Givens et als

Filed Aug 30th 1880.

Jas W Orr clk.

Virginia: Lee circuit court.

Wm H Burns Pltff
against
Thomas Givens et als Defts } In Chancery.

The undersigned Commissioner, who was appointed at the March term 1878, for the purpose of selling the land in the bill mentioned, or so much thereof as would be necessary, to pay the plaintiff's debt, interest and costs of suit and expense of sale, would respectfully report that pursuant to said decree and after having advertised as in said decree directed, I offered the 54 acres of land in the bill mentioned, for sale to the highest bidder, on six and twelve months credit, at the Dec~ term 1878 of the county court of Lee county, at which time Thomas Givens being the highest & best bidder the said land was knocked off to him, for the sum of $200 00 Two hundred dollars, which was less than the amount of the plaintiff's Claim Costs &c, The said Givens thereupon paid down the sum of $43.38 the costs and commission of sale, and for the residue of $156.62 he executed his bonds, with Thos S Ely security, for $78.31 each, payable in Six & twelve months. bearing interest from date, and waiving the home-stead exemption. Your Commissioner will further state that the said land is thin chest-nut ridge land, and sold for a fair price

Your Commissioner was directed in said decree to ascertain if he could, the residence of the defendants, and inform them of the purport of said decree by letter, but not being able to learn their P. O. address, did not write them on the subject. I am informed they live some where in Ky, but could not learn exactly where.

Respectfully submitted,

James H Orr Comr.

To
Hon Jno A Kelly

Wm H Burnes
vs
Report of Sale
Heirs &c
Filed Feb 1st 1879.
James H Orr, Clk

I agree and Bind myself my heirs &c to pay Wm H Burns fifty dollars, But if he fails to prevent the Lands that descended to the heirs of Daniel Sivins from being sold to pay a Judgment against H Rock Admr of Sivins in favor of Wm Allent, and also fails to get a credit on said Judgment for a deficiency of Land sold by Cox then only $25, of this note is to be paid, and I hereby waive the benefit of my homested exemption in favor of the collection of this debt, and assign as a collateral security for said debt to said Burns a note I hold on John Barlow, witness my hand & seal the 23d of March 1872

Thomas Sivins (Seal)

Thomas Givens

note $50

Appt. 76. Burns

(A)

Lee Co

U.S.
5
5
FIVE
CENTS
5
5

Two years after date I wish pay
Thomas Gibons One hundred and
twenty five dollars for Value Rec'd of
him Witness my hand and seal this
24th Sept 1870 (This note is for land)

Test

Goolmord
Davidson

his
Jonathan X Davidson
mark

I assign this note to Wm H Burns as collateral
security to secure a note he holds on me as
stated in said note March the 27th 1872

Thomas Givens

(83)

Jonathan
Burlow
To Note
$100.25

$ 5.48

~~$ 78.31~~

~~$ 140~~

~~50 Dec 2nd 1848.~~

$ 50 — Dec 23rd 1872.

48

400

2000

24.00

50.00

$ 74.

36

38

$ 38.76 Bab Aug 23rd 1880.

$ 55.00

38.76

$ 16.24

3176
36

7176

$78.31.

Twelve months after date with interest from date, we or either of us bind ourselves, our heirs &c, to pay to James W Orr Commissioner in the Chancery Cause of Wm H Burns against Thomas Givens & als, pending in the Circuit Court of Lee County Va, Seventy eight & 31/100 dollars being part of the purchase money for land. And we hereby waive the benefit of our homestead exemptions as to this debt. Witness our hands and seals. Decr 2nd 1878.

Thos Givens (seal)

Security

Thos. L. Ely. (seal)

Thos Quinens et al

To Note $78.31

Jas W Orr Comr

Due Dec 2nd 1879.

Know all men by these presents that we Jas W Orr and Wm H Burns are held and firmly Bound to the Commonwealth of Virginia in the full sum of five hundred dollars for the true payment whereof we bind ourselves our heirs &c jointly severally firmly by these presents in witness of the collection of which we waive our homestead exemption witness our hands & seals the 5th of ~~Dec~~ 1879

Nevertheless to be void if the said Jas W Orr will well and truly perform the duties of a receiver in the case of Wm H Burns vs Thos Givens et als in the Lee circuit court to which he has been appointed

James W Orr (Seal)
Wm H Burns (Seal)

Recipes
Breads

Wm H Bivins

vs

Thos Givens et als

Advertised, June 18/78
to sell at Aug'co' Ct 1878
54 acres part of land
bought by Givens & Albert
from Cox, & sold
by Thos Givens to Jonathan
Barlow & by Barlow to
John Nebbnow deed,
on credit of 6 & 12 mos.
At C.H. & Pennington's Mill
& Orr's Mill.

Pr Aug 6/78	$125.00
Int	44.00
Costs	33.38
Com'	11.12
Int to Oct 7/7	$213.50
	1.25
Total	$214.75

To be paid down $44.50

Each payment ~~$44.50~~
$85.12½

Thos Givens, at $200
Dec 2nd 1878,
& paid Costs & Com $43.96

$78.31

Six months after date, with interest from date, we or either of us bind ourselves, our heirs &c, to pay James W Orr Commissioner in the Chancery Cause of Wm H Burns against Thomas Givens &als, pending in the circuit Court of Lee County Va, Seventy eight & 31/100 dollars being part of the purchase money for land. And we hereby waive the benefit of our homestead exemptions as to this debt. Witness our hands and seals. Dec 2nd 1878,

Thos Givens (seal)

Security Thos S Ely (seal)

Shot Givens et als

To Note $18.31

Jas W Orr Comr

Due June 2nd 1878.

1880. July 25th Cr this note $36.00 cash

Cr 38.76 bal of the within due Wm H Burns. Aug 30/80.

Virginia,

At a Circuit Court continued and held for Lee County, at the Court House thereof, on Friday, the 5th day of December 1879.

Wm H. Burns Plaintiff } In Chancery.

against

Thomas Givens et als. Defendants }

On the petition of J. W. Orr, Commissioner & receiver in this cause, a rule is directed to issue, returnable to the 1st day of the next term of this Court, against Thomas Givens & Thomas S. Ely, to shew cause why a re-sale shall not be ordered to pay the unpaid purchase money said Givens owes for the land purchased by him. Teste James W. Orr, Clerk.

Chy. (81)

Wm H. Burns

vs. } Rule

Thomas Givens et al

1st day Mar T. 1880.

Executed. Jur 17th 1880.

Jas W Orr. Clerk.

Virginia,

In the clerk's office of the circuit court of Lee County, the 4th day of January 1878.

Wm H. Burns — Plaintiff
against
Thomas Givens et als — Defendants
} In chancery

The object of this suit is to obtain a decree for the sum of $50.00 the debt in the bill mentioned, against the defendant Thomas Givens; and to subject to the payment thereof, the estate of the said Thomas Givens which has been attached for the purpose. And it appearing from an affidavit filed in the cause that the defendants, Russ Webb, Bent Webb, Clifton Webb, Jennie Webb, Missouri Webb and Mary Webb, heirs and widow of John Webb deceased, and Thomas Givens, John Givens, Isaiah Givens and Emily Taylor are non residents of this State, and that the decedent John Webb has other heirs besides those named above whose names and residence are unknown, It is therefore ordered that they appear here within one month after due publication of this order and do what is necessary to protect their interest in this suit.

A Copy

Teste- James H. Or clerk

Wm. H. Burns

vs } Ord. Pub.

Thos. Givens et als

20000
43.40
15-6.60
78.30

20000
43.38
15-6.62
78.31

The Commonwealth of Virginia,

To the SHERIFF of Lee County---Greeting:

We COMMAND You to Summon Jonathan Barlow, Russ Webb, Bent Webb, Clifton Webb Admr. of John Webb dead. and one of his heirs. Missouri Webb, Jennie Webb and Mary Webb widow of John Webb dead, and the other unknown heirs of John Webb dead, Harvey Hall, Wm Bailey, Thos Givens, Lehue Givens, Josiah Givens & Emily Taylor

to appear before the Judge of the Circuit Court of Lee County, at the Court-House, in the Clerk's Office, at Feby *Rules next, to answer a bill in Chancery, exhibited in our said Court, against* them by Wm H. Burns

And have then there this writ. Witness, James W. Orr, *Clerk of our said Court, at the Court-House, this* 10th *day of* Decr 187 7 , *in the* 102 *year of the Commonwealth.*

R. St. Orr Jr. D. Clerk.

13

Wm H. Burns

vs

Spa. in Eby

Thomas Givens et als

Feby. Rules 1878.

Executed upon
Jonathan Barlow
Wm Bailey & Henry Hall
the other defts. not in
the Commonwealth.

Thos. E. Ely S.L.C.

I Hereby Certify

That, a Chancery Order in the Circuit Court of Lee *County, of which the annexed is a copy, was printed four successive weeks in the* "Lee County Sentinel," *a weekly newspaper published in the town of Jonesviville, County of Lee, State of Virginia. Publication ending this,* 25 *day of* Jany. *1878.*

Edwards Willoughby

Publisher "Sentinel."

Virginia.—In the Clerk's office of the Circuit court of Lee county, the 4th day of January 1878.

Wm. G. Burnes, Plaintiff.
against
Thos. Givens, et als. Defendants.

IN CHANCERY.

The object of this suit is to obtain a decree for the sum of $50.00 the debt in the bill mentioned, against the defendant Thos. Givens, and to subject to the payment thereof, the estate of the said Thos Givens which has been attached for the purpose. And it appearing from an affidavit filed in the cause that the defendants Guss Webb, Bent Webb, Clifton Webb, Jennie Webb, Missouria Webb and Mary Webb heirs and widow of Jno. Webb decd. and Thos. Givens, John Givens, Isaiah Givens and Emaline Taylor are nonresidents of this State, and that the decedent John Webb has other heirs beside those named above, whose name and residence are unknown. It is therefore ordered that they appear here within one month after due publication of this order, and do what is necessary to protect their interest in this suit.

A copy. Teste—JAMES W. OGG Clerk.
Jan. 5th, 4w $5.

Publisher's Certificate.

CASE OF

Wm. A. Burnes

vs.

Thos. Givens

in Chancery.

P. Q.